Pleasant v. Call Doc. 2

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division

SYLVESTER F. PLEASANT, JR.,

Petitioner.

v.

Civil Action No. 3:19CV422

WARDEN D. W. CALL,

Respondent.

MEMORANDUM OPINION

Petitioner has submitted a motion asking for an extension of time in which to file a motion under 28 U.S.C. § 2254. Federal Courts, however, lack jurisdiction to consider the timeliness of a § 2254 petition until it is actually filed. *Gregory v. Bassett*, No. 3:07cv790, 2009 WL 455267, at *2 (E.D. Va. Feb. 23, 2009) (citations omitted); *see United States v. White*, 257 F. App'x 608, 609 (4th Cir. 2007) (holding that no case or controversy existed before § 2255 motion was actually filed (citing *United States v. Leon*, 203 F.3d 162, 164 (2d Cir. 2000))). Because a § 2254 petition did not accompany Petitioner's motion for an extension of time and because the motion did not contain any cognizable claims for habeas relief, Petitioner's motion for an extension of time (ECF No. 1) will be DENIED. *See Ramirez v. United States*, 461 F. Supp. 2d 439, 440–41 (E.D. Va. 2006) (citations omitted).

This action will be DISMISSED WITHOUT PREJUDICE.

The Clerk is DIRECTED to forward to Petitioner the form for filing a petition under 28 U.S.C. § 2254. Any § 2254 petition that Petitioner files must conform to the rules governing such motions and be sworn to under the penalty of perjury. *See* Rules Governing § 2254 Proceedings for the U.S. District Courts, Rule 2(c). Petitioner also is advised that § 2254

petitions are subject to a one-year statute of limitations and a restriction against second or

successive petitions. See 28 U.S.C. §§ 2244(b)(3), (d).

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge

issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1). A COA will not issue

unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C.

§ 2253(c)(2). This requirement is satisfied only when "reasonable jurists could debate whether

(or, for that matter, agree that) the petition should have been resolved in a different manner or

that the issues presented were 'adequate to deserve encouragement to proceed further." Slack v.

McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 & n.4

(1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this

matter. A certificate of appealability is will be DENIED.

An appropriate order will accompany this Memorandum Opinion.

1

M. Hannah Lauck

United States District Judge

Date: June 12, 2019 Richmond, Virginia

SO ORDERED

/s/

M. Hannah Lauck

United States District Judge

2